



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 20, 2022

IN THE MATTER OF:

Appeal Board No. 623696

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective October 25, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by THE MOUNT SINAI HOSPITAL prior to October 25, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed May 5, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant applied to the Appeal Board, pursuant to Labor Law § 620 (3), for a reopening and reconsideration of the Judge's decision. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for a hospital as a full-time business associate from 2015 through October 25, 2021. As a business associate, the claimant performed tasks including registering new patients and collecting insurance information. He worked the 11:00 PM to 7:00 AM shift.

The claimant received a final warning on March 17, 2021 for insubordination based on his alleged refusal to stay for the 7:00 AM to 3:00 PM shift, as he was mandated to do, after a worker on that shift called out and none of the other business associates volunteered to work that shift. The warning document stated, "Any additional similar infractions can and will lead to further disciplinary actions, up to and including termination."

Around 5:00 on the morning of September 2, 2021, a manager told the claimant that a worker on the 7:00 AM shift was running late, and the manager mandated the claimant to stay late until that worker arrived. The claimant responded, "If I get a parking ticket, will you pay for it?" The claimant did not say whether he would stay or not stay. The coworker ultimately arrived on time.

The claimant continued working from September 2 through October 25, 2021. On October 25, the employer discharged the claimant for insubordination based on the September 2 incident.

OPINION: The credible evidence establishes that, when a manager mandated the claimant to work past the end of his shift on the morning of September 2, 2021, the claimant did not state that he would not work as directed. The claimant merely asked, "If I get a parking ticket, will you pay for it?" In the absence of any evidence that the claimant refused to work, we find that he did not so refuse. Therefore, he did not lose his job by reason of misconduct. Accordingly, we conclude that the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 25, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 25, 2021 cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER